IN THE HIGH COURT OF BOMBAY AT GOA

SECOND APPEAL NO. 99 OF 2005
WITH
CIVIL APPLICATION NO. 220 OF 2005

1. Anand Phadte
   Resident of Mangeral,
   Carambolim, Ilhas, Goa.

2. Umesh Gauns
   Agassaim, Mandur,
   Ilhas Goa.

3. Mohan Gauns,
   Resident of Acsan,
   Madkai, Ponda Goa.

4. Raghunath Bandodkar,
   Resident of Panvel,
   Ribander, Ilhas Goa. .... Appellants

Versus

1. Corlim Education Society
   A Society registered under the Societies Registration Act 1960,
   through its president
   of the Managing Committee,
   having its office at
   C/o Vidhya Niketan High School,
   Corlim, Tiswadi Goa.

2. Shri Govind B. Parvatkar,
   C/o Corlim Education Society,
   having office at Vidhya Niketan High School
   Corlim, Ilhas, Goa.

3. Shri D.D. Mangadkar,
   Executive Secretary

of the Managing Committee of Corlim,
Education Society,
C/o. Vidhya Niketan High School,
Corlim, Tiswadi, Goa.

4. Shri Manoj P. Naik,
Major of age,
C/o Corlim Education Society,
Vidhya Niketan High School,
Corlim, Tiswadi, Goa.

5. Haridas Jalmi, Mjor,
C/o Corlim Education Soceity,
Vidhya Niketan High School,
Corlim, Tiswadi, Goa.

6. Pratap Naik,
C/o. Corlim Education Society,
Vidhya Niketan High School,
Corlim, Tiswadi, Goa.

7. Vishwanath Naik,
C/o Corlim Education Society,
Vidhya Niketan High School,
Corlim, Tiswadi, Goa.

8. Dr. Kashinath Jalmi,
resident of Taj Co-operative Hsg. Society,
Marcel Goa.

9. Shri Tulsidas Naik,
Nr. Snanda Bai Bandiodkar High School,
Ilhas Goa.

10. Shri Rayu D. Naik,
H.No. 210, Corlim Ilhas Goa.

11. Shri Dugadas Gaonkar,
Dulaper Corlim Ilhas Goa.

12.Shri Daku Gaude,
Dulaper Corlim Ilhas Goa. .... Respondents

Shri V.A. Lawande, Advocate for the Appellants.

Shri S.G. Dessai, Sr. Advocate with Shri S. Kalshaukar, Advocate for Respondents no. 1 to 7.
Shri S.D. Lotlikar, Sr. Advocate with Shri M. De Souza, Advocate for Respondents no. 8 to 11.

CORAM : **P.V. KAKADE, J.**

DATE : **5th DECEMBER, 2006**

ORAL ORDER :

Heard the learned Counsel for the appellants as well as all the respondents.

2. This appeal is preferred against the judgment and order passed by the Ad-hoc Additional District Judge, Panaji allowing the appeal and setting aside the order passed by the Court of the Civil Judge, Junior Division, Panaji in Regular Civil Suit No. 54/98/C dated 1/04/2004 dismissing the plaintiffs' suit. The appellate Court decreed the suit in terms of prayer clause (a) and (b) i.e. for declaration and perpetual injunction and issued declaration to the effect that plaintiffs no. 2 to 7 were the duly elected managing committee members of the plaintiff no.1 – Society, as

having been elected at the meeting held on 30/03/1997 and 17/08/1997 alongwith defendant no.10. Further, it was directed that defendants were restrained from styling themselves as members of the managing committee of the Society.

3. The dispute between the parties in a nutshell appears to be a quarrel between the rival groups in the administration of Corlim Educational Society which is registered under the Societies Registration Act, 1860 for which purpose the suit came to be filed for declaration and perpetual injunction, praying that plaintiffs nos. 2 to 7 were the duly elected managing committee members of the plaintiff no.1 – Society, having been elected at the meeting held on 30/03/1997 alongwith defendant no.10. It was further prayed for by the plaintiffs to the effect that defendants should be restrained from styling themselves as members of the managing committee and should not act in such manner. The trial Court adjudicated the dispute on merits and on the basis of available evidence, and came to the conclusion that the suit was liable to be dismissed. The appeal was preferred to the District Court in which course, the learned appellate Court Judge after hearing both the parties, did not concur with the findings recorded by the trial Court and held that the plaintiffs' suit deserved to be

allowed and, accordingly, the suit came to be decreed.

4. The two appeals came to be filed by different groups involved in the suit who formed the defendants. One appeal being, Second Appeal No. 68 of 2005 and the other being, Second Appeal No. 99 of 2005. It may be noted at this juncture that it was brought to the notice of the Court that the lis involved in the dispute revolved around the legality of the meeting held on 30/03/1997 involving the tenure of 3 years of the managing body of the Society i.e. they were elected for the period of 3 years. Therefore, in the Second Appeal preferred in the year 2005, this Court was of the view that no worthwhile purpose would be served by adjudicating the dispute on merits as the entire exercise would be in futility, and only an academic exercise, without serving any purpose of the relevant rules and law. Therefore, this Court suggested to the parties to hold fresh elections as in any case the tenure of the managing body elected in March, 1997 was over in the year 2000. The appellant in Second Appeal no. 68 of 2005 as well as respondents no. 2 to 7 agreed to the proposal and order by consent came to be passed on 6/11/2006 (further modified on 21/11/2006 in M.C.A. No. 783 of 2006), where under the fresh elections were directed to be held under the direction and guidance of Director of Education which process I

am informed is under way.

5. At the said time, when Second Appeal No. 68 of 2005 came to be disposed of by consent order, the respondents no. 8 to 11, who are appellants in the present appeal i.e. Second Appeal No. 99 of 2005 contended that the issue involved required adjudication on merits and, therefore, the appeal came to be disposed of by consent order without consent of respondents no. 8 to 11, on the ground that the present appeal was pending and it would be gone into on merits as and when it would come up for hearing.

6. At this stage, it must also be noted that Second Appeal No. 68 of 2005 was disposed of by this Court on the basis of consent of the appellants as well as respondents no. 2 to 7, solely on the ground that prosecuting the appeal any further would serve no purpose and would be of academic purpose only for the reasons recorded in the said order and paramount consideration for disposal of the appeal and direction of the fresh elections was the interest of the Society involved in litigation, especially when it is an Education Society. At that time when the appeal was disposed of by consent of the said parties, the respondents no. 8 to 11

did not join the consenting parties. However, their present appeal was kept alive and, therefore, no grievance could be made by them, or can be made at this stage as it is obvious that they wanted to perpetuate the dispute for the reasons best known to themselves, putting their own interest above the interest of the Society.

7. Be as it may, the fact remains that the present appeal has come up for admission today. The substantial question of law sought to be raised is to the effect that whether the appellate Court was right in decreeing the suit and reversing the findings of the trial Court when the matter in dispute pertained to the elected body and the tenure of the elected body being only for a period of 3 years which expired during the pendency of the suit and the appeal, and not taking into account new elections having been held whether the appellate Court exercised the jurisdiction illegally without jurisdiction. This point is taken up on the ground that the lower appellate Court issued declaration to the effect that the plaintiffs no. 2 to 7 were the duly elected managing committee members of plaintiff no.1 – Society, having been elected in the meeting held on 30/03/1997. On this basis, it was submitted on behalf of the appellants that when the tenure of the managing body came to an end in the year 2000, the appeal could not have

been prosecuted in the year 2004. Relying upon the Apex Court rulings, it was urged on behalf of the appellants that the dispute raised in the case has lost its relevance due to passage of time and subsequent events which have taken place during the pendency of the litigation. In the circumstances, continuing this litigation will be like flogging a dead horse. Such litigation, irrespective of the result, will neither benefit the parties in the litigation nor will serve the interests of the Union. I totally agree with this proposition of law laid down by the Apex Court and for this very purpose, Second Appeal no. 68 of 2005 was disposed of by this Court suggesting consent terms, to hold fresh elections as there was no point in flogging a dead horse. In my considered view, this present appellants should have consented for disposal of this appeal also, by joining other parties in disposal of the appeal and holding fresh elections, but they abstained from doing so. However, now the question is whether the lower appellate Court had jurisdiction to adjudicate the first appeal in the year 2004. It must be noted that the tenure of the managing body had come to an end in the year 2000 itself. In my considered view, it would have been appropriate for the appellate Court itself to suggests or direct the parties to hold fresh elections, instead of prosecuting the appeal, but that does not mean that the order passed by the lower appellate Court Judge was without jurisdiction, especially when it is a

settled principle of law that the first appeal is nothing but the continuation of the suit itself. Moreover, the declaration given by the appellate Court is regarding legality or illegality of the election of the managing body held in the year 1997, which the parties called upon the lower courts to decide, and it was accordingly decided. Therefore, by no stretch of imagination, it can be said that order was without jurisdiction only because the tenure of the managing body committee came to an end in the year 2000.

8. So far as the perpetual injunction granted by the lower Court is concerned, I must note that I fully agree with Mr. Dessai, the learned Counsel for the respondents no. 1 to 7, who submitted that the order of perpetual injunction co-related to the declaration which was regarding the elections held in the March, 1997 and could not be read as perpetual injunction beyond the year 2000. Under the circumstance, on that count also it cannot be said that the order passed by lower appellate Court was nullity.

9. In view of these aspects, I hold that there is no substantial question of law involved in this appeal and as such the appeal is devoid of any merits and stands dismissed and disposed of with no order as to costs.

Consequently, civil application no. 220 of 2005 also stands dismissed with no order as to costs.

P.V. KAKADE, J.

NH